IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12638 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHCHANDRA DEVIDAN GADHIV

Versus

PRINCIPAL

Appearance:

1. Special Civil Application No. 12638 of 2004

MR DIPAK R DAVE for Petitioner No. 1

MR NV GANDHI for Respondent No. 1 & 2

MR SP HASURKAR, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/02/2005

ORAL JUDGEMENT

Rule. Learned advocate Mr.Gandhi waives service of notice of rule on behalf of respondent Nos. 1 and 2

and learned AGP Mr.Hasurkar waives service of notice of rule on behalf of respondent No.3. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. While issuing notice dated 1.10.04, this Court had recorded the statement of the counsel for the petitioner that the petitioner is ready to submit a letter of resignation/application for voluntary retirement which may be considered by the authorities.

3. It appears that after 17 years of service, the services of the petitioner who was working as a Teacher came to be terminated pursuant to departmental inquiry. This order was also upheld by the Education Tribunal. The counsel for the petitioner submits that considering the long service put in by the petitioner and the allegations against the petitioner which do not include any charge of financial irregularity or any charge involving moral turpitude, the imposition of penalty which would wipe out the entire service of the petitioner would be harsh and excessive. He, therefore, submits that the petitioner would like to approach the authorities for permitting him to resign from service or tender his voluntary retirement as may be permissible under the rules which would ensure that the past service put in by the petitioner is saved for the limited purpose of retiral and other benefits.

4. In view of the above submissions, it is provided that the petitioner shall approach the respondent No.1 & 2 by making appropriate application for accepting his resignation/voluntary retirement. If such an application is made within a period of two weeks from today, learned counsel Shri Gandhi assures this Court that the school authorities shall process the same and take a decision sympathetically and forward the proposal to the District Education Officer as expeditiously as possible and in any case not later than two months from the date of receipt of such an application. Upon receipt of such a proposal from the school authorities, the District Education Officer shall take decision regarding granting approval to the same within a period of two months thereafter. The authorities shall take their respective decisions unmindful of the earlier order of the Disciplinary Authority as upheld by the Tribunal. If the decision at any stage is adverse to the petitioner, it will be open to the petitioner to take such recourse as may be available under the law. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)